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considerations. By misreporting costs, a BOC could readily undermine the balance struck by the regulator.

29. A simple example may make this point. A BOC not integrated into long-distance service (a stand-alone BOC) has a certain level of costs for providing access service. Assume that a BOC charges \$1 per unit of access service and AT&T charges \$1.50 (net of access) per unit of long-distance service, for a total charge of \$2.50 for bundled, end-to-end service. (For simplicity, my example includes only one BOC, rather than an originating and terminating BOC. This simplification does not affect the analysis.) Assume that the BOC enters the long-distance market, and its long distance cost (net of access) is \$1.75 per unit. By attributing costs to local service that are in fact attributable to long-distance service, the BOC can exclude its long-distance rival, AT&T, even though AT&T can (by assumption) provide long distance service more efficiently than the BOC can. For example, the BOC can manipulate its accounting records to shift 50 cents of costs from long-distance service to access service. Then the reported cost of making a long-distance call through the BOC will be \$1.50 for the access segment and \$1.25 for the long-distance segment, a total of \$2.75 (which will be less than the \$3.00 that AT&T will then be forced to charge). The resulting harms are two-fold. First, the consumer must now pay \$2.75, not \$2.50, for end-to-end service. Second, if the difference between the \$1.50 and \$1.75 for long distance service net of access reflects a difference in economic cost, then society is needlessly wasting 25 cents for every long-distance call routed via the BOC.

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C. Prevention of Incessant Regulatory Disputes and Litigation

30. It may be thought that these problems could be redressed by independent carriers' lawsuits or regulatory complaints against BellSouth and other BOCs that might subsequently be granted approval for long-distance entry, but such forms of relief are neither adequate nor desirable. Proving discrimination in any of its multiple forms -- in pricing, provisioning, the use of information, and buying -- would be at least as difficult for the independents as it would be for regulators. BOCs would win most, if not all, such cases, including those they should not win, and thus they would, on the whole, benefit from the practice.

31. Worse than that, however, allowing BOCs into long-distance service while their monopolies remain intact would result in even more litigation and regulatory disputes than there were prior to the decree. There would be created a bonanza for lawyers and economists as regulatory disputes proliferated before state and federal agencies and lawsuits were filed charging discrimination, theft of intellectual property, and predation in violation of Section 2 of the Sherman Act.

32. The old AT&T system was constantly involved in such controversies because it was alleged to have engaged in many of the same tactics that would be available to vertically integrated BOCs. In the decade before the decree, seventy lawsuits were filed against AT&T. Because the industry is constantly changing, vertically integrated BOCs would mean endless complaints, regulatory investigations and hearings, and litigation. Matters would be worse than they were before the decree because there are now seven

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RBOCs rather than one Bell System and many more providers of national and regional long-distance service (there are currently hundreds of carriers and resellers of such service).

33. The enormous increased costs of regulation and litigation must be taken into account when considering the vertical integration of the BOCs because they are just as much costs to telephone users and to the economy as is monopolistic pricing in telephone service and the misallocation of resources as between local service, on the one hand, and long-distance service, on the other.

IV. BELLSOUTH'S APPLICATION SHOULD BE DENIED

34. The considerations discussed above weigh heavily against removing the interexchange restriction on BellSouth at this time. BellSouth notes that there are regulations that purport to prohibit any anticompetitive activities in which it might engage. But such regulations have never been deemed sufficient to check those abuses.¹ That is presumably why Congress did not authorize the BOCs to enter the long-distance market merely upon the adoption of regulations.

¹ For example, BellSouth asserts that price cap regulation removes any incentive for it to engage in cross-subsidization. This contention is unpersuasive because it overlooks the fact that the price caps will have to be related to costs. When the initial price cap is set, the regulator will have to know a BOC's costs to arrive at a cap that covers costs and allows a reasonable rate of return. If telephone technology and rates never changed, that might prevent cross-subsidization when the BOC then entered long-distance. But technology is constantly changing and new price caps will be constantly required. There seems no way to arrive at the new caps except by measuring costs once again, but that provides the incentive and the opportunity for the regulated BOC to shift costs from long-distance service to local service. Similarly, "true-ups" may well be ordered in the face of claims of overrecovery or financial distress.

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35. The only real check on the potential abuse of a BOC monopoly is the elimination of that monopoly. That has not yet occurred in Louisiana. BellSouth continues to dominate all of its local markets in Louisiana. Indeed, BellSouth acknowledges that it has not unbundled a single loop in Louisiana and that it has resold little more than 7,000 lines. Neither local exchange customers nor long-distance carriers today have any real choice of providers for the services they obtain from BellSouth, and that absence of choice is what makes possible all the anticompetitive conduct described above.

36. BellSouth appears to be arguing, therefore, that it should be permitted to enter the long-distance market -- even while it completely dominates its local markets -- because regulation will prevent BellSouth's abuse of market power until the steps it claims to have taken to open its markets produce effective competition. But as demonstrated above (¶¶ 14-19, 22-30, 34), regulation alone will not deter BellSouth from engaging in anticompetitive conduct. Further, without evidence of actual competition, BellSouth's contention that it has taken sufficient steps to open its local markets is wholly unpersuasive.

37. Moreover, even if one could be certain that BellSouth has taken the steps necessary to permit local competition, there would still be no reason to approve its application for long-distance entry before such competition develops. Such premature approval would enable BellSouth to impede long-distance competition until the date local competition actually arrives, and would encourage it to take new steps that would delay or prevent the advent of that local competition.

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I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on November 14th, 1997


Robert H. Bork

SUBSCRIBED AND SWORN TO BEFORE ME this 14th day of November 1997.


Notary Public

My Commission Expires:

My Commission Expires April 30, 2002